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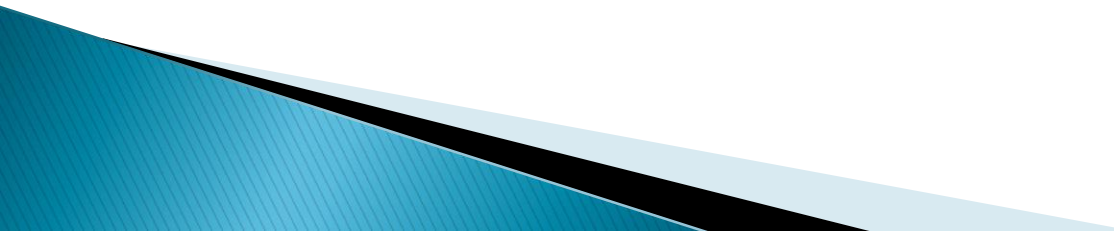
Background

- ▶ Rogelio Montes and Mateo Arteaga brought an action against the City of Yakima to remedy a violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301
- ▶ Montes alleged that the at-large electoral system in the City deprived Latinos of the right to elect representatives of their choosing to the City Council

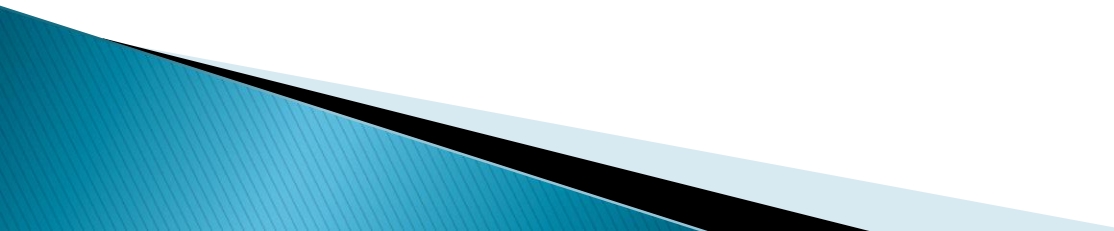
Rogelio Montes, et al., v. City of Yakima, et al. (2014)



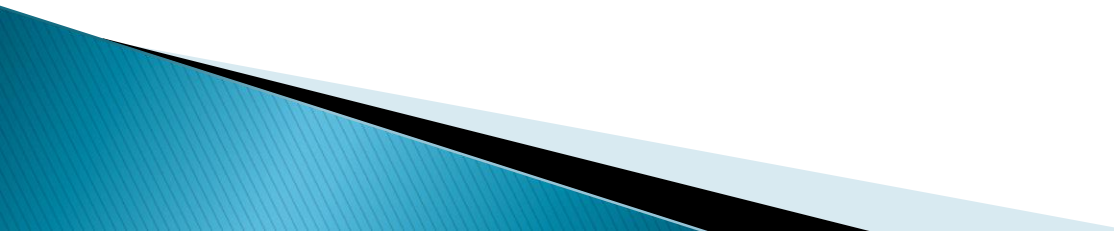
Yakima Electorate Process – Primary and General

- ▶ Yakima used an at-large election system to fill seven seats on the City Council
 - ▶ The elections adhere to a “numbered post” format, wherein candidates file for a particular seat and compete only against other candidates who run for that same seat
 - ▶ Four of the seats required the candidates to live within a geographic district. The other three seats were at large seats with no residency restriction.
 - ▶ If more than two candidates file for a particular seat, the City conducts a primary election to narrow the field to two candidates
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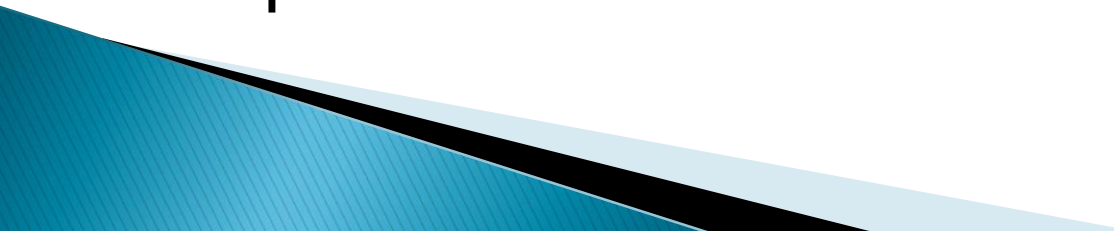
Yakima – Primary

- ▶ In the primary, if the seat is one of the four residency-restricted seats, only voters who reside in the district which correspond to that seat may vote in the primary
 - ▶ If the seat is unrestricted, all voters residing within the City may vote
 - ▶ The two candidates who receive the highest number of votes advance to a general election
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Yakima – General

- ▶ Two candidates run head-to-head for each seat
 - ▶ The candidate who obtains the most votes wins
 - ▶ All registered voters may cast one vote in each head-to-head race, without regard to whether the seat is residency-restricted
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Section 2 of the Voting Rights Act: 52 U.S.C. § 10301

- ▶ Protects the Fifteenth Amendment guarantee that “no citizen’s vote shall ‘be denied or abridged...on account of race, color, or previous condition of servitude”
 - ▶ Confers a right to participate equally in the political process
 - ▶ Does not confer a right to proportional representation
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Section 2 of the Voting Rights Act: Violations


- ▶ A violation occurs when, based upon the totality of the circumstances, the challenged electoral process is not equally open to participation by members of a racial minority group
 - Its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice

Gingles: Necessary Preconditions

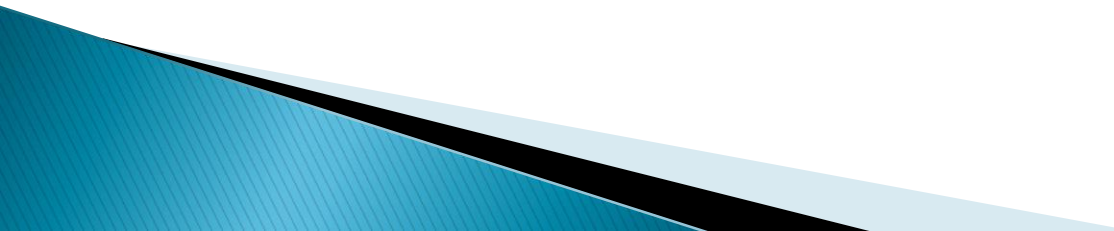
- ▶ The *Gingles* court identified three “necessary preconditions” which a plaintiff must satisfy to proceed with a vote dilution claim:
 - (1) Plaintiff must demonstrate that his/her minority group is “sufficiently large and geographically compact to constitute a majority in a single-member [voting] district.”
 - (2) He or she must establish that the minority group is “politically cohesive.”
 - (3) Plaintiff must demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.
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Gingles:

Necessary Preconditions Cont.

- ▶ Plaintiff must make a prima facie showing that a bloc voting majority will *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group
 - ▶ Plaintiff need not demonstrate a design to discriminate or intentional racial bloc voting, only that the system has the *effect* of denying the minority the equal opportunity to elect its candidate of choice
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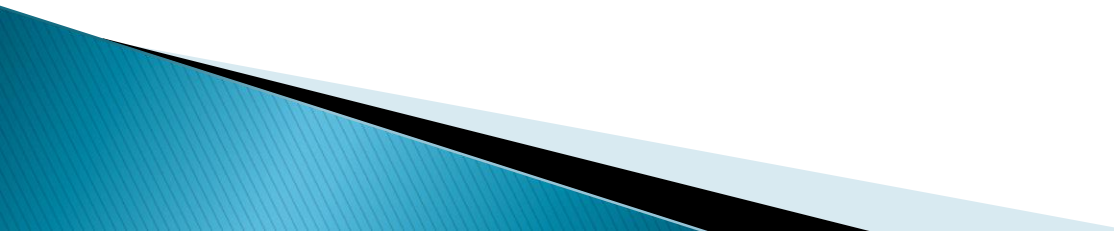
First Gingles Precondition

- ▶ The question asked is whether there are enough minority voters, and are they sufficiently large and geographically compact to form a majority of voters in a single-member district
 - ▶ A hypothetical district in which minority voters represent more than 50% of all eligible voters demonstrates an effective remedy can be established
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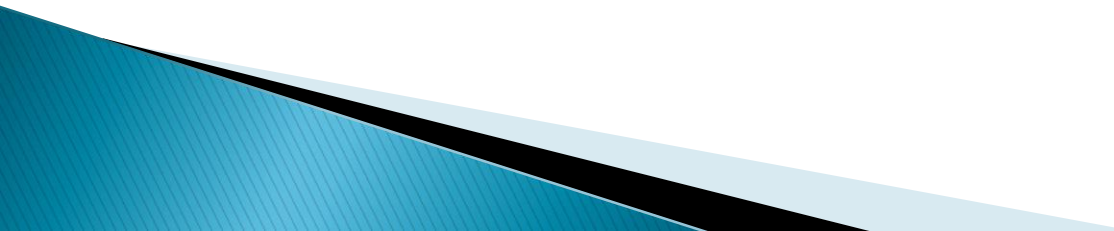
First Gingles Precondition: Sub-Criteria – Numerosity & Compactness

- ▶ Courts which address vote dilution claims under Sec 2 of the VRA divide the first precondition into two sub-criteria: Numerosity and compactness.
 - **Numerosity** is satisfied when minority voters form “a numerical, working majority of the voting-age population” in the proposed district
 - **Compactness** refers to the geographical dispersion of minority voters within the jurisdiction

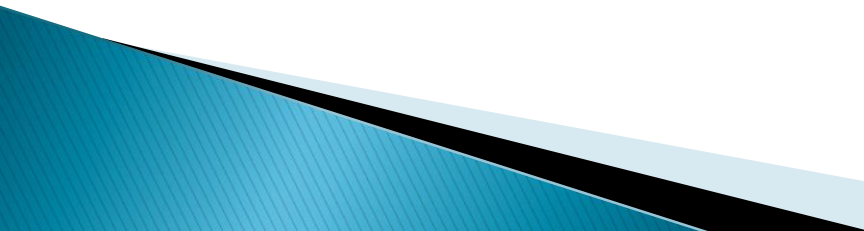
First Gingles Precondition: Application of Numerosity

- ▶ The court in the Yakima case concluded that the Plaintiffs established that a district can be drawn in which the Latino citizen voting age population comprises more than 50% of the district's total eligible voters
 - ▶ The court therefore found no genuine issue of material fact as to numerosity
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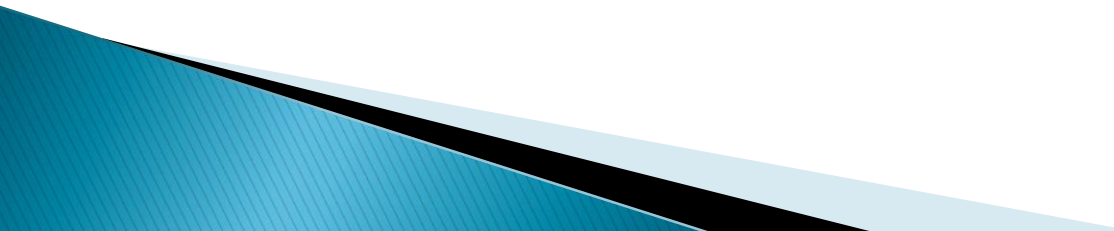
First Gingles Precondition: Application of Compactness

- ▶ Compactness measures whether minority voters are sufficiently concentrated geographically to facilitate the creation of a single voting district where minority voters outnumber majority voters
 - ▶ The court in the Yakima case found that Plaintiffs demonstrated that the Latino citizen voting age population was sufficiently “compact” for the creation of a reasonably compact minority district
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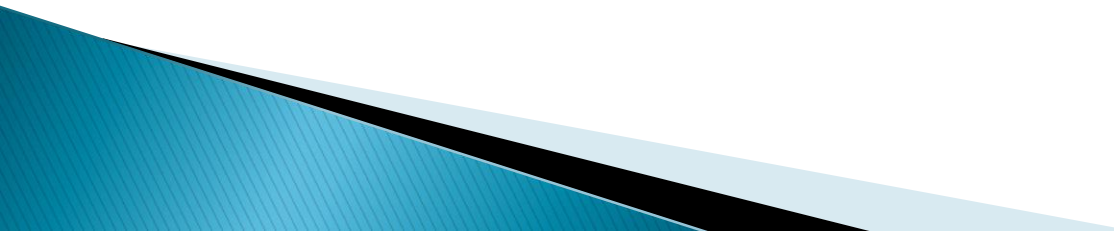
Second Gingles Precondition

- ▶ Focuses on whether the minority group is “politically cohesive”
 - ▶ The relevant inquiry is “whether the minority group has expressed clear political preferences that are distinct from those of the majority”
 - ▶ Plaintiff must demonstrate that “a significant number of minority group members usually vote for the same candidates”
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Third Gingles Precondition

- ▶ Focuses on whether the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate
 - ▶ In general, a majority bloc vote that “normally will defeat the combined strength of minority support plus majority crossover votes rises to the level of legally significant majority bloc voting”
 - ▶ The court held that there is only one rational conclusion to be drawn from the undisputed evidence: “that the non-Latino majority in Yakima routinely suffocates the voting preferences of the Latino minority”
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Gingles Precondition: Application

- ▶ In the Yakima case, the court explained that the *Gingles* framework is merely a screening tool designed to help courts determine which claims could meet the totality of the circumstances standard for a violation
 - ▶ Satisfaction of the three *Gingles* preconditions does not result in a finding of liability
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Gringles: Liability

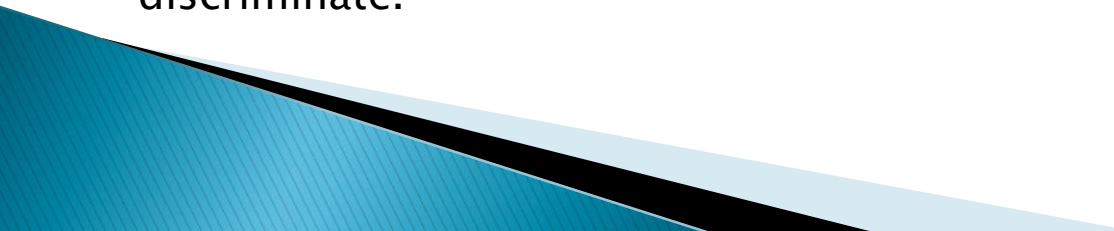
- ▶ The Plaintiff must ultimately show that, under the “**totality of the circumstances**,” members of a minority group have **less opportunity** than the majority **to participate** in the political process and to elect representatives of their choosing”

Totality of the Circumstances: Senate Factors

The *Gingles* court identified seven non-exhaustive factors called the “Senate Factors”

- (1) The history of voting-related discrimination in the jurisdiction;
- (2) The extent to which voting in the elections of the jurisdiction is racially polarized;
- (3) The extent to which the jurisdiction has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority groups, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting;
- (4) The exclusion of members of the minority group from candidate slating processes;
- (5) The extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
- (6) The use of overt or subtle racial appeals in political campaigns; and
- (7) The extent to which members of the minority group have been elected to public office in the jurisdiction.

A court is required to look only at the *discriminatory result*, not intent to discriminate.

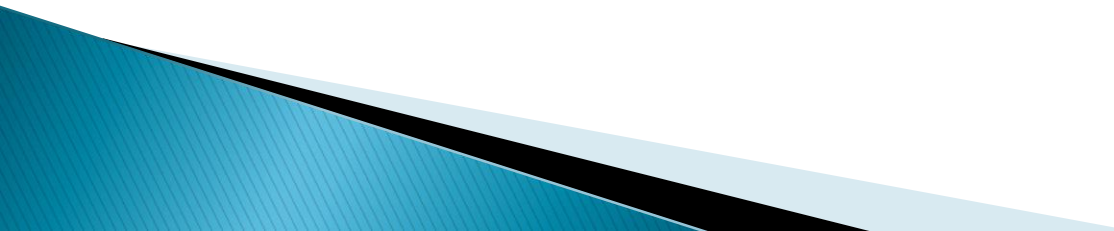


First Factor: History of Voting Related Discrimination


- ▶ The court in the Yakima case found relevant that Yakima County was sued by the U.S. Department of Justice in 2004 for failing to provide Spanish-language voting materials and voter assistance as required by Section 203 of the Voting Rights Act

Second Factor:

Extent of Racially Polarized Voting

- ▶ The court in the Yakima case found that there can be no serious dispute that voting in Yakima is racially polarized
 - ▶ In 9 of out 10 contests analyzed, the Latino candidate received more than 50% of the votes cast by Latino voters
 - ▶ The court noted that despite the strong Latino support, the Latino candidate was defeated in every single race as a result of bloc voting by the non-Latino majority
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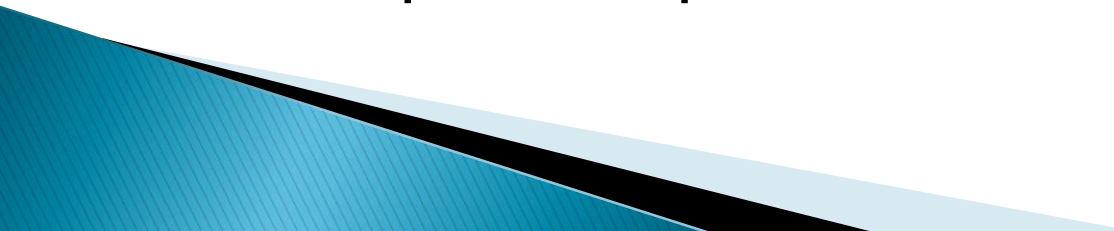
Third Factor: Presence of Suspect Voting Practices and Procedures

- ▶ Looks to “the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group”
 - ▶ The court found, “under a best-case scenario—which assumes that all eligible Latinos are registered to vote, that they all turn out to vote in the election, and that they all vote for the same candidate—a Latino-preferred candidate would need at least one-third (33.3%) of the non-Latino majority’s votes to win a City Council seat”
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Fourth Factor: Exclusion of Minorities from Candidate Slating Process

- ▶ The court in the Yakima case found that this Senate Factor was not applicable.


Fifth Factor: Lingering Effects of Past Discrimination

- ▶ The fifth Senate Factor is “the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process”
 - ▶ The court found that “it can be hardly disputed that depressed socio-economic conditions have at least some detrimental effect on participation in the political process
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Sixth Factor: Use of Subtle or Overt Racial Appeals in Campaigns

- ▶ The court found insufficient evidence of this Senate Factor.

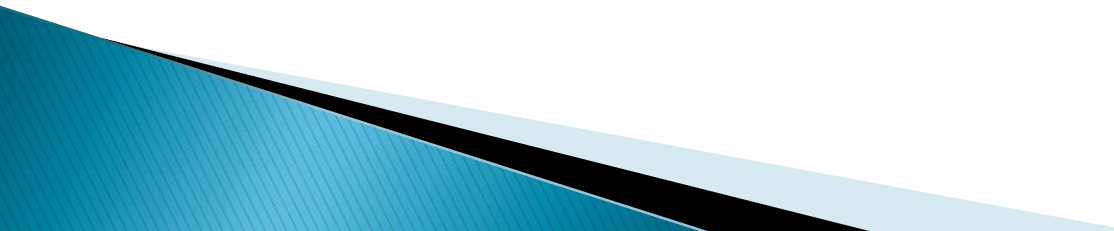
Seventh Factor: Extent of Minority Electoral Success

- ▶ Looks to “the extent to which members of the minority group have been elected to public office in the jurisdiction”
 - ▶ The court found that it is undisputed that no Latino candidate has ever been elected to the City Council under the current voting system
 - ▶ The court noted that the only Latina ever appointed was defeated by a non-Latino challenger upon running for election
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Extent of Senate Factors

- ▶ The court found that on balance the Senate Factors weigh firmly in Plaintiffs' favor
- ▶ The court held that this supports only one rational conclusion: “that under the **totality of the circumstances** City Council elections are not “equally open to participation” by Latino voters

Final Injunction and Remedial Districting Plan

- ▶ In the absence of a valid legislative plan, the duty falls on the court to impose a constitutionally acceptable plan that will remedy the Voting Rights Act violation
 - ▶ When a court is required to fashion a remedy, the Supreme Court has directed the use of single-member districts unless there are compelling reasons not to use them
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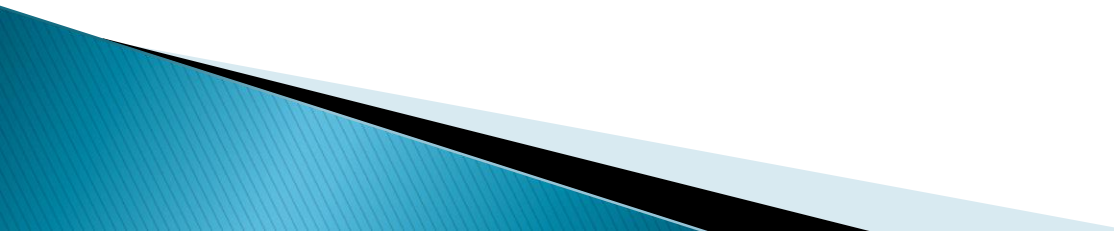
Final Injunction and Remedial Districting Plan

- ▶ The court in the Yakima case found that Plaintiffs' Plan would create seven single-member districts.
- ▶ The court found that:
 - District 1 would have a majority-Latino citizen voting age population (CVAP) (52.52%)
 - District 2 would have “a substantial Latino population, in which Latinos constitute 45.34% of the CVAP
 - In Districts 3 and 4 that Latinos would constitute a quarter or more of the CVAP
- ▶ The court found that Plaintiffs' Plan “affords Latinos the present ability to elect a Latino-preferred candidate in District 1 and a genuine possibility to elect a Latino-preferred candidate in District 2.” The court held that this provides **rough proportionality**.

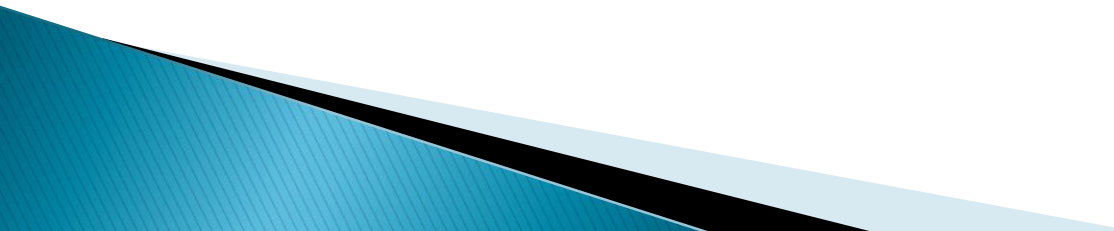
Court Conclusion

- ▶ The court in the Yakima case emphasized that “districting plans with some members of the minority group outside the minority-controlled districts are valid,” and “the fact that the proposed remedy does not benefit all of the Hispanics in the City does not justify denying any remedy at all.”

Order Re: Attorneys Fees & Costs

- ▶ The Court ordered Yakima to pay Plaintiff's attorneys fees in the sum of \$1,521,911
 - ▶ The Court ordered Yakima to pay Plaintiff's costs in the sum of \$320,461
 - ▶ Yakima also incurred nearly \$1 million of its own attorneys fees & costs to defend the case
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Next Steps

- ▶ Gingles factors – Data needed
 - Numerosity & compactness – need census data
 - Political cohesiveness – need data on how the majority has voted, and on how the minority has voted over time
 - Majority bloc voting – need data on whether majority usually votes as a bloc to defeat the minority
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Totality of the Circumstances – Senate Factors

- ▶ Extent of Racially Polarized Voting – need data
 - ▶ Lingering Effects of Past Discrimination – need data on socio-economic conditions
 - ▶ Extent of Minority Electoral Success – Need data on success of minority candidates
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